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# **Durham Middle East Papers**

**Sir William Luce Publication Series**

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Toledo, OH**

**From the Mahdiyya to the Salvation:  
Women's Rights in the Sudanese Laws**

**Luce Fellowship Paper No. 11**

**Institute for Middle East and Islamic Studies**

معهد دراسات الشرق الأوسط والدراسات الإسلامية، جامعة درم، انكلترا



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He was Governor of Aden from 1956 to 1960. From 1961 until 1966 and again from 1970 to 1972 he was intimately connected with the Gulf area, first as Political Resident, based in Bahrain and then recalled from retirement - as the Foreign and Commonwealth Secretary's Personal Representative for Gulf Affairs.

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From the Maydiyya to the Salvation: Women's Rights in the Sudanese Laws

**FROM THE MAHDIYYA TO THE SALVATION: WOMEN'S RIGHTS  
IN THE SUDANESE LAWS**

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**SIR WILLIAM LUCE FELLOWSHIP**

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‘The past is always an important part of the future. Thus, feminist legal theorists of the future should pay attention to feminist legal history..... We must never forget that good feminist legal theory is rooted in the experience of real women. Thus, we must guard against theory that becomes so abstract that it fails in practice to contribute to positive material change for women.’<sup>1</sup> Patricia Cain

This paper is part of ongoing research I am conducting into the legal system in the Sudan. It is an attempt to understand if it is the absence of the rule of law that is at the core of the wave of violence against women both within and outside of the conflict zones in the Sudan. Much of this paper centres on the historical eras of the Mahdiyya and the Condominium.

As I eagerly read through the documents of both eras in the Sudan Archive, I became increasingly convinced that the apparent breach of women’s rights is rooted in the history of the country. In this paper I start from the premise that gender disparity in Sudanese law is not a new phenomenon, it has figured prominently in the legal and political life in the history of modern day Sudan. I further argue that the current laws that control women’s lives in the Sudan resemble to an alarming degree those that existed more than one hundred years ago during the Mahdiyya.

As a religious state, now and also during Al-Mahdiyya, the Sudan is expected to have *Qur’an* and *Sunna* as the main sources of law. The interpretation of *Qur’an* is the most important part of law-making in Muslim nations. Unfortunately for women, Sudanese law-makers have adopted an interpretation of Islamic norms that has resulted in laws that discriminate on the basis of gender and ignore the rule of law.

Whereas Al-Mahdi disregarded twelve centuries of scholarship in favour of his own methodology and interpretation, all national governments have adhered to a patch-work of interpretation collected from different *madhahib* (schools of thought). The laws resulting from this patchwork have disregarded constitutional provisions regarding the equality of the sexes. More often than not, equality was confused with sameness and women who called for equality were silenced by accusations of being westernized and/or of being bad Muslims, wanting to masculinise women. All women’s rights are said to be subject to religious doctrine. Any disregard of women’s equality was thus dependent upon and therefore resulted from religious interpretation. The interpretation of that religion is treated as divine in itself and as such any opposition will be vilified.

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<sup>1</sup>[http://heinonline.org/HOL/Page?handle=hein.journals/wiswo11&div=20&g\\_sent=1&collection=journals](http://heinonline.org/HOL/Page?handle=hein.journals/wiswo11&div=20&g_sent=1&collection=journals) p. 367

This paper is not an exhaustive review of all laws regarding the rights of women; it is intended to provide examples of how women were governed since independence. I will explore the history of the status of women in Al-Mahdiyya, the Condominium and national governments. My main purpose is to expose discrimination against women in the law for what it really was and is, and to show that this discrimination was designed to serve political ends. Sondra Hale made a profound statement about how politics is the main driver behind the control of women both in law and in the justice system as a whole.

All political groups – those in power and integrally connected to the state, and those in opposition – aim at stabilizing, controlling, or reshaping the gender division of labor, thereby attempting to control women's material lives. One way to control women's material lives is by controlling or eradicating "women's culture" and/or directing women's participation in Culture.<sup>2</sup>

Excluding women from political activity is one thing. It is, however, another thing to exclude them from the justice system or to include them in such a way as to actually exclude them as actors and participants in the building of the nation as happened during Al-Mahdiyya, or to use the law to diminish their role as is the case now.

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<sup>2</sup> Sondra Hale, *Gender Politics in Sudan : Islamism, Socialism, and the State* (Boulder, Colo.: Westview Press, 1996). p. 227



### **Brief History**<sup>3</sup>

Throughout its recent history the Sudan has endured governance under different constitutional and legal systems. The sixth century witnessed the rise of two Christian kingdoms Almuqarrar and Alawa. The seventh century marked the entry of Arabs into the Sudan and the advent of Islam in the country. An Islamic reign started with the Funj Sultanate that swept away the two Christian kingdoms. The Sudan had lived for centuries under indigenous authorities until the attention of the Ottoman Empire was turned towards it for getting men to strengthen its army and other riches such as gold. The Turkish Ottoman Empire colonised the Sudan through Egypt, one of its own territories. This era is known historically as the Turco-Egyptian period (1821-84). The invasion of the Sudan by the Ottoman Empire marked the disappearance of indigenous authority. Consequent injustices and over-taxation of the people fuelled a war against the Ottoman Empire. That the war was led under the banner of returning the country to Islam, ignored the fact that the Ottoman Empire was the largest Islamic entity at the time. This war, that drove the Turco-Egyptians out of the Sudan, was led by Mohamed Ahmed ibn Abdallah, a Sudanese Sufi who claimed to be the Mahdi, the awaited guided one. This return to indigenous authority was short lived. The Mahdists' quest to Islamize Egypt and the rest of the world became a first priority and the citizens suffered the wars waged against them which resulted in confiscation of their property and the taking of women.<sup>4</sup> It was an easy task for the British to convince the Egyptians of the necessity for a re-conquest of the Sudan, especially with a French attempt to conquer the country from the western borders. In 1899 the Anglo-Egyptian forces succeeded in re-conquering the Sudan, creating an era known as the Condominium which lasted till January 1956 when the Sudan regained its independence. Its subsequent history is one of three long military dictatorships and three short-lived democratic eras.

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<sup>3</sup> For a short history of Sudan see, The Sudan (2010) in *Encyclopaedia Britannica*. Retrieved May 25, 2010, from Encyclopedia Britannica Online: <http://www.search.eb.com/eb/article-24313>

<sup>4</sup> Letter from al-Shami Habani to the Sirdar [H.H. Kitchener Pasha], 26 Jumada II, 1316. 11 November 1898. SAD.101/12/18

A version of *Shari'a* continued to govern the personal status of Muslims, especially women, both free and slaves, despite the apparent abolition of Al-Mahdiyya's religious state by the Condominium administration and national governments after independence. Personal status laws have always been legislated within the perspective of controlling women. With this in mind, one can safely say that, women's citizenship, personal status and human rights in the Sudan have been governed by one version or another of *Shari'a*. A gender-based review of the laws that governed women's status since Al-Mahdiyya would reveal a history of women's exclusion from the justice system. This understanding is important in order to be able to trace how gender disparities and exclusion from the rule of law have affected women.

### **Al-Mahdiyya: Legal Methodology**

To understand the legal methodology of Al-Mahdi one has to look into the political situation that spawned the methodology. Mohamed Ahmed ibn Abdullah emerged as Al-Mahdi *Al-muntadhar* (the awaited guided one) who had been described by the Prophet Mohamed as a person who would appear every one hundred years to renew the religion. Al-Mahdi was clear about his message as *khalifat rasoul Allah* (the successor of the Messenger of Allah); he called all people to believe and join Al-Mahdiyya or risk falling into *kufir* (infidelity). All Muslims had to believe in Al-Mahdiyya if they were to remain as Muslims. He was clear about his authority and its source. He claimed communication with the Prophet through prophetic colloquy (*al-hadra alnabawiyya*).

'I was told by the Prophet that I was Al-Mahdi Al-muntadhar and he sat me on his chair several times in the presence of the Khulafa'a and chosen ones and [the Prophet] Al-khadir peace be upon him and Allah has supported me with angles and Prophets and awlia'a from Adam till this day'<sup>5</sup>

In other proclamations Al-Mahdi said that the Prophet had said three times that "whoever doubts his [Al-Mahdi's] Mahdiyya is renouncing his belief in Allah and his Messenger"<sup>6</sup>; and therefore, those who rejected his Mahdiyya were to be considered infidels. By the above proclamation Al-Mahdi had declared the divine nature of his message and warned against any opposition. He made it clear that disbelievers would be challenged. He called for jihad in its two forms, i.e. major jihad known as *jihad alnafs* (controlling one's own lusts and keeping one

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<sup>5</sup> Mohamed Ibrahim Abusalim, *Manshurat Al-Mahdiyyah* (Beirut: Dar al-jeel, 1979). p. 24

<sup>6</sup> Ibid.

from slipping into disobedience of God), and minor jihad which was to wage war in order to propagate the message, in this case the message of Al-Mahdiyya.

As a sufi with the knowledge of all the different opinions regarding the interpretation of the Qur'an and Sunna, Al-Mahdi knew that his Mahdiyya would soon be undermined by those who already stood in opposition to him. Therefore, he knew that his political ambitions would be grossly hindered by subsequent philosophical debate. He deemed his only way out of this situation was to start with a clean slate. He therefore repealed all the Turkish laws that then applied in the Sudan, disregarded twelve centuries of Islamic scholarship and declared all sufi *Turuq* illegal and ordered his followers to stop obeying them.<sup>7</sup> Any opinions he expressed or proclamations made were through *ilham*, inspiration, direct instructions from the Prophet. He sought to avoid involvement in the deep and thorny philosophical arguments made by scholars apparently to eliminate any opposition or diversion from his political goal of Islamisation. Despite this, his adherence to the interpretations of Muslim scholars that he had learned from his sufi teachers, is apparent. The divinity attached to the politics of Al-Mahdiyya did not end with Al-Mahdi. It continued with his successor Al-Khalifa Abdullahi who claimed direct communications with Al-Mahdi through the same process claimed by Al-Mahdi with the Prophet Mohamed.

Al-Mahdi's legal methodology helped him to prevail and prepare for his goal to defeat those who spoiled Islam. His legal methodology was described by Aharon Layish:

'The Mahdi's legal methodology, though simple and unsophisticated, seems to have been effective in enabling him to achieve his goals. He ignored all schools of law (mudhaib) and disregarded their legal literature, thus releasing himself from the burden of taqlid, and the positive law as consolidated within these schools.'<sup>8</sup>

The lack of sophistication claimed by Layish suggests that Al-Mahdi's laws could not be classified as modern law, i.e. in separating substantive law from procedural and evidential rules. It takes a long time to extrapolate the law from the lengthy *manshurat*, proclamations of Al-Mahdi. Despite this, the book of *Al-Ahkam wa Al-Adaab* included the legislations of Al-Mahdi. Although it was a "legislate as you go" methodology, because the law was basically judge made law (mainly through responses to questions from judges or Emirs who were given the authority to adjudicate). Nevertheless, it had certain other features i.e. the source was said

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<sup>7</sup> Mohamed Ibrahim Abusalim, *Mansurat Al-Mahdiyyah* (Beirut: Dar al-jeel, 1979), p. 61-65

<sup>8</sup> Layish Aharon, "The Mahdi's Legal Methodology as a Mechanism for Adapting the Shar'a in the Sudan to Political and Social Purposes," *Revue des mondes musulmans et de la Méditerranée* <http://remmm.revues.org/index257.html>.

to be divine, and therefore the rules were immutable. Each answer was delivered with rules of evidence and recommendations as to the treatment of people who seek justice, and justice was swiftly delivered.

### **Rules Regarding Women in al-Ahkam wa al-Adab**

*Al-Ahkam wa Al-Adab* (proclamations that promulgated laws) is an important part of *manshurat* Al-Mahdi, as it is the part that regulates all aspects of the life of Muslims. In addition to crimes and punishment, rules of evidence as well as the personal status of Muslims, especially marriage and dissolution of marriage, it contained rules pertaining to women. It also dealt with rules of citizenship after Al-Mahdiyya and prohibited residing or dealing with the Turks (known as the Turuk). Other important proclamations included rules regarding slavery and economic affairs pertaining to *suq* (market) regulations and contractual relationships.

There were a number of political factors that affected the status of women. The first political aspect to Al-Mahdi was *Hijra* (migration). This migration was coupled with a mandate of jihad although some exceptions applied to women regarding jihad, as mentioned below in the text of the proclamation. Once women completed the *hijra* they were recognized as subjects of al-Mahdiyya. The country was divided into *dar al-harb* and *dar al-Islam* or *dar-assalam*. As a result all men and women who stayed in *dar al-harb* were considered infidels and not worthy of protection. Their marriages were ruled null and void and their property was confiscated by the triumphant Mahdiyya soldiers. The political factor that gravely affected women was the recognition of slavery as a state institution which was a revenue source for the new state. I will discuss the effect of these factors on the laws regarding women.

Reading through the Mahdiyya proclamations pertaining to women reveals that women were not dealt with as citizens within the law. They were practically excluded from the justice system, despite leaving their homes and families behind in their *hijra* to Al-Mahdi. They were removed from public life through *hajjr* (a seclusion order). This seclusion was mentioned at least three times in separate messages from Al-Mahdi.<sup>9</sup> Al-Mahdi stipulated in his *Ahkam* that:

As it is known people in this day and age will not contain themselves except by seclusion and interdictions. It is imperative to seclude all women and prevent them from going out

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<sup>9</sup> Muhammad Ahmad Mahdi, *Manshurat Al-Imam Al-Mahdi*, 3rd.ed. (al-Khartoum: Idarat al-Mahfuzat al-Markaziyah, Wizarat al-Dakhliyah, 1964). p. 10, 30, 33

and walking in places where men are found. Especially, since the prophet said men and women should be kept apart ..... therefore we see that women should be prevented from going to markets and being on the street; except a young girl that raises no sexual desires or mutajjala [a migrant woman on her way from the West to the River], or old women that men are not interested in anymore. Even young slave women should be prevented from venturing outside homes. A woman who ventures out of her home after three days of announcing this order should be flogged a hundred lashes to censure and discipline her and to deter others. This order shall be implemented by the governor of the market and all Emirs regarding women in their territory. The judge shall have jurisdiction over the matter of women who contravene this order.<sup>10</sup>

Whether a woman should be sent to court for contravening the order is a matter left to the authority at the place where the woman was found, i.e. the governor of the market or the Emir. The court may not assume jurisdiction until those authorities decide to send her to court. Al-Mahdi further ordered that:

Women should join jihad in the cause of Allah; those who are old that men are not interested in them anymore should join jihad hand and foot. The young ones should practice jihad by way of self control. They should stay home and not flirt the flirtation of jahilyya [pre-Islamic epoch] and not leave home without a legal need to do so. They should lower their voices and not greet men except when they are behind hijab [curtain]. They must perform their prayers and obey their husbands and cover themselves with clothes. If any of them stood with uncovered head even if for a period of time equal to an eye wink she should be flogged 27 lashes. If a woman raises her voice she should be flogged 27 lashes.<sup>11</sup>

Flogging of women for breach of the *hajjr* proclamation was expressed as censure, discipline or deterrence, not as punishment for a crime. The only crimes in which women were included were the *hudud* crimes. However, *hajjr* made it almost impossible for women to commit *hudud* crimes since they were not allowed to venture outside their homes. The only instance that I could find with the word punishment attached to women's behaviour was in the answer to "whether a young woman, who from childhood, was wearing men's clothes, riding horses, and behaving like men, should be allowed to mingle with men." The answer was that she should not be allowed to mingle with men, she had to be disciplined and threatened with punishment to give up masculine behaviour, and if she did not come to her senses she should

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<sup>10</sup> Muhammad Ahmad Mahdi, *Mansurat Al-Imam Al-Mahdi*, 3<sup>rd</sup> ed p. 29-30

<sup>11</sup> Mahdi, *Mansurat Al-Imam Al-Mahdi*. p. 29-30

be punished by death. The only time a woman could dress like a man and ride a horse was when she was doing that in order to trick the enemy during war.

The *hajjr* order was coupled with other orders that made women's socializing with each other a difficult endeavour. The cultural practices of women that were an opportunity for women to gather and interact with each other were forbidden. Before Al-Mahdiyya women were free to gather at weddings, condolence days after a funeral and even at zar<sup>12</sup> parties. These were occasions for dancing, singing and exchanging news and advice on various aspects of their lives. Women could own their own homes and live independently of men if they chose to do so. Indeed in the Turco-Egyptian era Sudanese women were known to be free and even have their own quarters. Nasra bit Adlan and her daughter were examples of how women lived freely without any restrictions.<sup>13</sup> Al-Mahdi banned musical instruments and drums for any event; the only drum beat allowed was that of the huge drum known as *nihās* heard before and during a war. Such prohibition further eliminated opportunities of women gatherings at weddings, baby-naming and the *nuggarah* performance of praise of the dead at funerals, to name some of the occasions of drumming and singing. Homes became women's prisons.

The prohibited traditional practices existed side by side with Islam. J.S. Trimingham noted that:

‘The Sudanese received Islam whole-heartedly, but, through their unique capacity of assimilation, molded it to their own particular mentality; escaping the formulae of theologians, they sang in it, danced in it, wept in it, brought their own customs, their own festivals into it, paganised it a good deal, but always kept the vivid reality of its inherent unity under the rule of one God.’<sup>14</sup>

Trimingham's statement is a shrewd observation by a clergyman who knew something about how people practice their religion. However, instead of “paganisation” of the religion I would say that Sudanese people practiced their traditions alongside Islam with little effort to find religious support for those “pagan” practices. The prohibition of those practices deprived

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<sup>12</sup> Zar is a healing practice that uses drums and other instruments to appease the jinn that women and a few men believe that they possess and cause their illness. Through dancing herself into a trance the woman would speak in the voice of the daemon or jinn that possesses her and make demands of clothes or gold or whatever appeases the jinn.

<sup>13</sup> For an account by travelers and description of the palace of Princess Nasra bit Adlan see Richard Hill, *On the Frontiers of Islam : Two Manuscripts Concerning the Sudan under Turco-Egyptian Rule, 1822-1845*, Oxford Studies in African Affairs. (Oxford: Clarendon P., 1970). And Mukhtar Ajuba, *Al-Mar'ah Al-Sudaniyah: Zulumat Al-Madi Wa-Ishraqatib*. (Cairo Center for Sudanese Studies, 2000).

<sup>14</sup> As quoted in Ibrahim Elnur, *Contested Sudan: The Political Economy of War and Reconstruction*, Durham Modern Middle East and Islamic World Series (London and New York: Routledge, 2009). p. 4

women of opportunities to socialise with each other and relieve themselves from the monotony of daily chores. It also brought women under the full control of the state.

The prohibitions also had political motives. They were a way to control men. Men should have no doubt as to who was in control in their homes, it was the state. The law in this case was not directed towards giving men any control of the women over whom they were appointed guardians. It was and still is a way of emasculating men by imposing upon them the rigid state authority for their control of women and family. This authority is the only authority that they could have in a state that gave them no say in how it was governed or how its laws were legislated.

### **Marriage and Divorce**

Marriage had never been used to support political aspiration in the manner it was used during Al-Mahdiyya. The division of the world into *dar al-harb* and *dar assalam* had a profound effect on marriage. As mentioned above, all marriages of those who migrated to Al-Mahdi and left their spouses in the land occupied by the Turuk had their marriages annulled.<sup>15</sup> This political and geographical division of land had a direct effect on women and the legal status of their marriages. Annulment was mandatory whether the spouses agreed to it or not. The annulment rule was meant to free the women who were living in *dar assalam* after leaving their husbands behind. To stress the importance of this rule all men were told to renew their marriage contracts even if their wives moved with them. Al-Mahdi proclaimed that in the case of a couple who migrated together the annulment should not give either spouse the right not to agree to a new contract. He said that a man should not refuse to remarry his wife and a woman did not have the right, in the first place, to refuse return to her husband after repudiation of the marriage. This statement is a clear indication that a man's prerogative to unilaterally end a marriage was recognized, the proclamation temporarily suspended that right for this specific occasion. A woman had no right, *ab initio*, to refuse to contract a marriage after repudiation by the husband or the law.<sup>16</sup> The reason behind such a proclamation was purely political and was meant to discourage people from remaining with the Turuk. It further asserted that the past traditional or Islamic codes, were no longer needed to enrich or organize people's lives.

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<sup>15</sup> This rule was promulgated to accommodate the women of Bara and al-Obied who left husbands behind, but applied to all. For the text of the proclamation see Mahdi, *Mansurat Al-Imam Al-Mahdi*, p. 21-22 of *al-Al-Abkam wa Al-Adab*.

<sup>16</sup> Unfortunately a similar rule still exists in the Personal Status for Muslims Act of 1991.

Neither being a Muslim nor staying married was a personal choice; both were bestowed or removed by law.

The annulment of marriages created at least one difficult situation. A man who was faithful to al-Mahdiyya remained with the Turuk and upon his migration to *dar assalam* found that his wife was married to another man. He demanded the return of his wife. Dealing with this difficult case had no legal basis. Al-Mahdi expressed some compassion for the first husband and admonished the second one to give up the wife in return for Allah's acceptance of his good deed.<sup>17</sup> It is noteworthy here that the wife's preference of which husband she wanted or whether she rejected both was not sought. The law moved her from one husband to the other without seeking her consent.

The restrictions on marriage extended to limit *mahr*, dowry, a restriction that neither the *Qur'an* nor *Sunna* advocated. Al-Mahdi ordered that the dower of a virgin should not exceed ten riyals and that of a widow or divorced woman should not exceed five riyals. Clothing should not be more than two dresses.<sup>18</sup> The rationale given for these restrictions was that they were supposed to prevent pompous extravagant spending on weddings and to direct resources towards jihad. The right of women to receive a dowry as an income that might be invested and increased as a protection was completely ignored in favour of making marriage easy for men and directing resources to jihad.

### **Slavery**

Al-Mahdi did not initiate slavery in the Sudan. When he came to power there was already a flourishing trade left behind by the Turco-Egyptian era. However, the Mahdist state expressed no reservations about slavery. It was a recognized institution as it had been at the dawn of Islam, indeed there was an open market for the buying and selling of slaves, and it was also an important economic resource. Women made up the bulk of that institution, they outnumbered men.<sup>19</sup> A woman slave would fetch more in the market as women were valued for the multiple services they provided. A woman slave could provide sexual, reproductive and domestic services, and thus she could enrich all aspects of her master's life. Suffice it to say that women slaves had no rights whatsoever. They were regarded as chattels rather than as human.

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<sup>17</sup> Mahdi, *Mansurat Al-Imam Al-Mahdi*. p. 250-251.

<sup>18</sup> Ibid. p. 20.

<sup>19</sup> Ahmad A. Sikainga, "Shari'a Courts and the Manumission of Female Slaves in the Sudan, 1898-1939," *The International Journal of African Historical Studies* 28, no. 1 (1995). p. 2



Enslaving women after a war was justified on religious grounds by Al-Mahdi and his successor Al-Khalifa Abdullahi. Muslims were enslaved after battles with various tribes, and women were freely taken as the spoils of war. The justification for this was that those who were fighting Al-Mahdi were to be classed as infidels and as such it was therefore ~~to be~~ considered a religious right to take them as booty. Women were driven to Omdurman and kept in captivity till Al-Khalifa made a decision about them. At least in two incidents the women captured after a revolt were returned to their homes as a sign of reconciliation. After the vicious crushing of the Kababeesh and Ja`aliyyin for disobeying Al-Khalifa's orders, the rape and enslavement of the women of those tribes was permitted. However, Al-Khalifa decided to return the captured women to their homes as a sign of reconciliation with both tribes. During the Condominium era that sought to free women from, and prohibit slavery, the legacy of this inhuman status of enslaved women continued to hinder the achievement of their rights.

### **The Condominium**

Upon the re-conquest of Sudan and the establishment of the Condominium rule by the British and the Egyptians, the new colonial authority inherited a legal system that was resented and resisted by many Sudanese. The bloody wars, famine and total control of all aspects of life by the Mahdists had alienated many of the Sudanese tribes and sufi groups. The Mahdist legal system was seen by some scholars as primitive and unsustainable. Guttman would not recognize it as worthy of the name legal system. He asserts that, 'On re-conquest it was found that no system of civil or criminal justice, worthy of that name, existed in the Sudan, and that no Sudanese had so far received a legal training of any kind.' He admitted that anthropologists and perhaps lawyers might disagree with his statement.

Anthropologists might disagree with me here. But then they would mainly base themselves on the existence of primitive village mores which were enforced by the sanction of the village society as expressed by its elders and on the existence of garbled versions of the Qur'an which might have been applied as law in these communities.<sup>20</sup>

In fact the Mahdist legislation and courts were more than village mores or garbled versions of the *Qur'an*. What helped the reception of Common Law in the Sudan was not a lack of a system but a resentment of the oppressive regimes of the Turco-Egyptian and Al-Mahdiyya. Although they believed "wholeheartedly" in Islam, oppression in the name of religion did not

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<sup>20</sup> Egon Guttman, "The Reception of the Common Law in the Sudan," *International & Comparative Law Quarterly*, No 6, (1957).

sit well with the Sudanese. Yet, being the patriarchal society that it still is they cared only about *Shari`a* application to personal status. Gutman quoting Mekki Shibiaka<sup>21</sup> reported that,

Lord Cromer visited the Sudan and addressed an assembly of the inhabitants of Omdurman. In the course of his address he pointed out "No attempt will be made to govern the country from Cairo, still less from London. You must look to the Sirdar alone for justice and good government. . . . There will be no interference whatever in your religion." One of the Sheikhs present asked whether this guarantee of religious freedom included the application of the Mohammedan law, and Lord Cromer assured him that it did.<sup>21</sup>

In its quest to appease the Sudanese and minimize any chances of revolt, the Condominium administration did not do much to advance the status of women. In fairness to that administration, Sudanese society was not at all open to any liberation of women, it did not even accept the education of women.

The British administration created a multiple legal system to replace the laws of al-Mahdiyya. The new system applied *Shari`a* to the personal status of Muslims, common law for all other civil and criminal matters including Customary law. The judiciary consisted of both lower and higher courts and tribal courts were created. The first circular to regulate the application of *Shari`a* was issued by Kitchener of Khartoum.<sup>22</sup> Women gradually revived their cultural life. Soon after the defeat of al-Mahdiyya women went out to markets as buyers and sellers as witnessed in the pictures of women in markets taken during this era.

The status of one group of women remained unchanged. Slave women were totally deprived of their human rights during the Condominium. Civil tribunals had jurisdiction over the eradication of slavery by being empowered to issue papers granting freedom to slaves. Men had no problem becoming free on the basis of being granted papers, however, women faced formidable obstacles. The status of Muslim women was left completely under the jurisdiction of *Shari`a* courts as stipulated by the administration. Masters who wanted to keep women as slaves took advantage of this and claimed them as wives and also claimed custody of their children.

The British administration found it politically and economically expedient for the ex-slaves to remain with ex-masters. If slaves remained with ex-masters, they would be provided with the

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<sup>21</sup> Egon Guttman, "The Reception of the Common Law in the Sudan", *International & Comparative Law Quarterly*, No.6.

<sup>22</sup> SAD.542/21/4-6. 'Ta`alimat for alqadat al-*Shari`ayeen*. This circular contained mainly rules of procedure and evidence to be followed by *Shari`a* court judges until other orders were issued.

means of subsistence, whereas had they left they would have faced the hardships of unemployment. In the case of women there was a fear that they would become prostitutes. To avoid the evils of unemployment and prostitution the administration preferred that they stay with ex-masters. The civil secretary issued a confidential circular that detailed the legal relationship between masters and slaves as one between employer and servant. Women were to some extent excluded from that document because in the words of the Civil Secretary:

As in some parts of the country it appears to be a practice to make marriages with Sudanese women a pretext for their enslavement such cases should be carefully watched but the decision as to whether any particular marriage is valid or not is for the Religious Court to say and in any case it may be remembered that if a woman is a wife she must under Moslem Law be a free woman.<sup>23</sup>

Apparently the Civil Secretary had resorted to a technicality in the law to say even though those women were returned to their masters, technically they were free. This circular was not the end of the administration's efforts to free women. Other circulars followed and women were able to obtain their freedom. Albeit at a low-key, efforts to educate free women continued, although the education of women was not seriously pursued until the late fifties and sixties decades of the twentieth century.

As no noticeable changes were made to the laws, I will not discuss the democratic era after independence or the first military coup led by General Ibrahim Aboud in detail. The military dictatorship banned the Women's Union because of its opposition to the military government and drove it underground, however, the government did manage to open more girls' schools. Approximately six secondary high schools for girls were opened. In 1964 a civil uprising brought down the military government. Women actively participated in the civil uprising especially high school girls. The Women's Union resumed its activities of organizing women. It also produced a monthly magazine which was used as a vehicle to protest against personal status law for Muslims and its subordination of women. No significant change occurred in the laws until another military coup lead by Ga'afar Nimieri took over the government in May of 1969.

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<sup>23</sup> Confidential Circular Memorandum No. 33, regulations as to Sudanese Servants. SAD.542/21/35

### **Nimieri's Military Coup 1969-1985**

After an initial fourteen years of advocating a socialist agenda, in September 1983 Nimieri turned against that agenda and brought the Muslim Brothers into the government and embarked on a plan of Islamisation of all laws. He appointed a team of three lawyers, two men and a woman who quickly produced Islamic Codes that became known as the September Laws. The Islamisation of all laws resolved the conflict that had arisen during the pre-1983 era when the common law and *Shari'a* law were in simultaneous use. As Dina Osman commented, 'The conflict between *Shari'a* and other rules has been resolved in favour of the former. One can safely state now that under these laws, *Shari'a* rules are supreme.'<sup>24</sup>

Islamisation was clearly a political move. Its introduction was, amongst other reasons, to avert a three-month-long judges' strike that created a constitutional vacuum. Nimieri's regime felt that it was losing ground and sought to strengthen its position amongst the people by introducing the Islamic Codes. Yet, due to the regime's extremely harsh application of the codes, Islamisation was one of the reasons that led to the regime's downfall in April 1985.

Women were the main victims of the Islamic laws. Non-Muslim women who were brewing liquor, as they traditionally did in their home cities, especially women from Southern Sudan, were hauled to criminal courts on a daily basis to be flogged. Police and security forces dragged women from parties and private gatherings to be tried for attempted *zina*, a crime that did not exist, and prostitution. Women were forced to wear tight head covers and long skirts underneath the already cover-all cotton cloth known as *tobe* that wrapped bodies from head to toe. Tellingly all women's organizations were banned and a governmental body called the Union of Sudanese Women was formed. Women were not attracted to this new organization and many continued to support the Women's Union's underground activities.

The oppression increased after the September Laws when what was known as Swift Justice courts were formed and were given jurisdiction over all types of cases. Nimieri claimed that the regular courts were slow and were not performing well. The Swift Justice courts increased the oppression because they neglected all rules of procedure and evidence. Not only did these courts ignore the law, but they invented crimes that were not in the Penal Code. For example, Mahmoud Mohamed Taha was arrested for his public opposition to the September Laws. The Islamists who supported Nimieri's Islamisation plan did not like the whole philosophy of Taha

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<sup>24</sup> Dina S. Osman, "The Legal Status of Women in the Sudan," *Journal of East African Research and Development* 15 (1985): 134.

and condemned him as an apostate. He was tried and hanged for the crime of *riddah*, apostasy, that was not a crime in the penal code.

Another blow to women's rights came in laws such as the Evidence Act where one lone woman's testimony became unacceptable. The testimony of two women was needed to match that of one man. Women were excluded from testifying in *hudud* crimes. These laws created some ludicrous situations in courts, as Nimieri in his early years had appointed women judges who were still sitting as judges when the September Laws came into effect. These judges were gradually removed from courts to do administrative work and for years no new women judges were appointed. Nimieri also created a rule that was similar to Al-Mahdi's *hajjr* but it was for travelling abroad. All women had to bring the written consent of their guardians to allow them to travel abroad. However, the Women's Commission at the Ministry of Interior had the final say on whether a woman should be allowed to leave the country. Men suffered the same state of emasculation that had happened during Al-Mahdiyya, they were not in control of their families. This is one of the gendered rules that is still in force.

People felt insecure in their homes and in public life. Freedom of speech, association and movement were restricted. The application of *Shari'a* was again under fire and people expressed their discontent in a huge civil uprising, helped by a military coup staged by Nimieri's Minister of Defence, General Seward Addahab which toppled Nimieri's regime in April, 1985.

### **Democratic era 1985-1989**

The uprising and the military coup in 1985 ushered in a democratic government. This government enacted a transitional constitution in 1985, which, like its 1973 precursor, prohibited sexual discrimination and conferred equality between the sexes. However, no change in the hated September laws took place under this democratic government. Despite all the defects that appeared in the Islamic Codes, even by the standards of traditional Islamic schools, and their harsh unconstitutional applications, the democratic government did not bring about any major change or repeal the codes. The best it did was put a moratorium on the execution of *hudud*. This moratorium was called "freezing of *Shari'a*." It was obvious that the draconian September Laws clearly contradicted the democratic atmosphere in the country.

A state of chaos reigned and another military coup called the National Salvation Revolution took over in June, 1989. The leaders of this coup are still in power in the Sudan. Although the discriminatory gendered laws of the current Salvation military government is the topic of

another paper in this research I thought it suitable to end this paper with examples of some of the rules governing the status of women now.

It did not take the Salvation military government long to declare that it was an Islamist coup with a well thought out Islamic agenda. In June 1989, the Constitution was suspended and the regime advocated its version of "Islamisation," in which Islamic rules were to be applied to all aspects of life. Women have found themselves in a situation that is similar in some aspects to that of Al-Mahdiyya. Travel restrictions, laws that target women's rights and examples of breaches of the Interim National Constitution are not in short supply.

Laws that allow police and security men to arrest women for wearing "indecent dress" or being in a place that could have been a place for committing the crime of prostitution or drinking are found in section 152 of the Criminal Law Act,<sup>25</sup> 1991 and the Public Order Act of the State of Khartoum. Over a hundred years after Al-Mahdiyya women are still being flogged and crimes against them could easily be turned into crimes committed by them. A case in point is section 149 (3) of the Criminal Law Act, 1991:

"Whoever commits the offence of rape, shall be punished, with whipping a hundred lashes, and with imprisonment, for a term, not exceeding ten years, **unless rape constitutes the offence of adultery, or sodomy**, punishable with death." (*emphasis added*).

The act could have at least stated that unless the "*sexual act*" instead of *rape* constituted adultery or sodomy. I think the trouble with this section starts with the definition of rape as a sexual act that is described in the law as an act of penetration with the sexual organ of a man. Rape, especially in conflict areas, is committed with gun barrels and other instruments. It is evident that women should, if they dared to, seek prosecution of such acts under another section of the law. A new movement called the Coalition of 149 has started to call for the reform of this contradictory section that is making it difficult for women to initiate criminal proceedings against their rapists. The saga of the breach of rights and the endurance of gendered injustice continues for Sudanese women.

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<sup>25</sup> Section 152 that resembles in some aspects Al-Mahdi's proclamation mentioned elsewhere in this paper stipulates: 152. (1) Whoever commits an indecent act or behaves in a manner that breaches public morality or is dressed in a revealing dress that breaches public morality or causes discomfort to the public, shall be punished with flogging not exceeding 40 lashes or with a fine or both.

(2) The act shall be deemed contrary to public morality if it is so deemed in the religion of the person who committed the act or the custom of the place where such act has been committed.



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